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SUBJECT: HONG KONG CONSTITUTIONAL REFORM: END OF THE
BEGINNING OR BEGINNING OF THE END?

REF: (A) HONG KONG 2234 (B) HONG KONG 2125

Classified By: Acting Consul General Christopher Marut for reasons 1.4(b) and (d)

11. (C) Summary: The various forces in Hong Kong's debate on constitutional reform have taken their positions on the field. A motion in the Legislative Council (LegCo) calling on the people of Hong Kong to support the League of Social Democrats' (LSD) and Civic Party's resignation-as-referendum plan failed December 9. However, the LSD and the Civics have declared they will proceed with their plan to have five members resign from LegCo to use the resulting by-elections as a "referendum" on the government's proposed constitutional reforms (ref B). Former Chief Secretary Anson Chan, seen as the one person who might have walked the Civics back, has formally endorsed the resignation plan. The plan has not gained substantial support from the general public, has been derided as a pointless waste of public funds by the government and the pro-Beijing establishment and, crucially, lacks the backing of the Democratic Party. Meanwhile, supporters of the idea that LegCo's sectoral functional constituencies (FC) could be made compatible with a version of universal suffrage will no doubt rejoice in a High Court ruling that FCs are not incompatible with the Basic Law. We reckon the formal battle for the support of the people of Hong Kong will begin with the pan-democrats January 1 march in support of universal suffrage, with the resignations to be announced sometime after mid-January. End summary.

12. (C) Comment: While the Hong Kong government and, we believe, Beijing, would prefer not to see the resignation-as-referendum plan go forward, they seem unwilling to make the substantive concessions that might either put off the Civics or win over the Democratic Party. Most observers doubt that even a five-seat win by the LSD and the Civics would sway Beijing, and hope instead to draw international attention. We believe the United States cannot take a position on the mechanisms used to implement universal suffrage without being seen as taking a partisan "side" and therefore "meddling" in Hong Kong's internal affairs. However, particularly as forces within Hong Kong are seeking to distort basic concepts such as "one man, one vote," we believe reiterating the U.S position on HK's democratic development is vital given our obligations under the Hong Kong Policy Act. Septel will outline core points we recommend be deployed on this issue. End comment.

Gauntlet Thrown

13. (C) League of Social Democrats (LSD) leader Raymond Wong Yuk-man tabled a motion in the Legislative Council (LegCo) December 9 calling on "all people in Hong Kong to fully support the campaign of 'resignation en masse of Members returned from five geographical constituencies as a referendum on the fight for dual universal suffrage in

2012.'" Recognizing Beijing has already declared universal suffrage in 2012 a non-starter, Civic Party Vice Chair Alan Leong Kah-kit moved an amendment which replaced "universal suffrage in 2012" with the (undated) goal of "genuine universal suffrage and the abolition of functional constituencies." The LSD voted in favor of this amendment, perhaps the first time they have been willing to go on record as supporting anything less than universal suffrage in 2012, and also the first concrete gesture they have made in support of their unlikely alliance with the Civics. Confederation of Trade Unions legislator Lee Cheuk-yan told us the Democratic Party (DPHK) was not willing to explicitly concede 2012, and voted as a bloc against the amendment. Lee reported pan-democratic caucus convener Cyd Ho Sau-lan abstained for the same reason. The final vote on the original motion failed, with the DPHK abstaining as a bloc. Formalizing his much-discussed break with his colleagues, the Civics' Ronny Tong Ka-wah chose to absent himself from the voting. Despite the loss and Tong's opposition, the LSD and the Civics have made clear they will proceed with the resignation plan.

Chan Backs the Plan

¶4. (C) The LSD and the Civics picked up a key endorsement December 10 from former Chief Secretary and legislator Anson Chan Fong An-sang. In her December 10 statement, Chan declared that "the moment of truth" had been reached, and called on the pan-democrats to support the resignation plan. She urged the pan-democrats to put aside considerations of individual gain and loss and to trust in the will of the

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people to strive for democracy. She also derided the government as "totally insincere" and its consultation document as "a step backwards." Media quoted Chan dismissing concerns that the resignations might cost the pan-democrats their "blocking minority" -- enough votes to deny the government the two-thirds majority needed to change the Basic Law. What good would another veto do? she asked.

¶5. (C) Chan was part of a coalition of senior democratic statesman, including DPHK founder Martin Lee Chu-ming, Next Media publisher Jimmy Lai Chee-ying, commentator Allen Lee Peng-fei, and Cardinal Joseph Zen Ze-kiun, who were reportedly instrumental in winning over the Civics' leader Audrey Eu Yuet-mee. In recent weeks, however, both Martin Lee and Allen Lee have been quoted as expressing misgivings. Chan's own statements had been limited to supporting "true universal suffrage" and unity among the pan-democrats. Chan confidante Allen Lee told us Chan still had her doubts, but felt the train was leaving the station and she therefore had to chose a side. Interestingly, Lee felt Audrey Eu might have heeded Chan's doubts, but by this point had herself already made too many public statements in favor of the resignation plan and was thus "stuck."

¶6. (C) Ronny Tong agreed that elder statesmen might have influenced Audrey Eu, and he was sure only Anson Chan could have walked Eu back. That said, he did not think this group was the strongest force pushing the Civics. He described Civic Party General Secretary Kenneth Chan Ka-lok as a "radical" who became enamored of the LSD's resignation plan. Chan convinced legal sector legislator Margaret Ng Ngoi-yee (who has been identified to us by others as the most radical of the Civics' legislators). Ng in turn convinced Alan Leong, whom Tong scorned as seeking to become either a democratic hero or a democratic martyr as a way to position himself for a second run for Chief Executive in 2012. Leong then convinced Eu, who was also being courted by the elders, and some combination of the two forces led to the Civics endorsing the plan.

¶7. (C) The LSD corroborated this in part. LSD Vice Chair Andrew To Kwan-hang told us that the resignation plan was

Leung "Long Hair" Kwok-hung's brain-child that the LSD leadership sold to the party from the top down. For the Civics, To contended, the opposite occurred: younger members at the grass roots had agitated for the leadership to support the plan. Indeed, Kenneth Chan himself, who initially expressed reservations to us about the plan, warned that Hong Kong was seeing a rise in disaffected youth willing to drop out of politics wholesale in favor of anti-system protests. Young Civics who lose faith in the party do not defect to the ideologically similar DPHK, he told us, they either go to the LSD or they drop out of the system.

Sizing up the Windmill

18. (C) The LSD and the Civics face three obstacles as they prepare for their by-elections. First is the support of their putative allies. The DPHK will put the resignation plan to a formal vote at their general meeting December 13, but with every major leader except Martin Lee protege James To Kun-sun publicly against it, the DPHK is expected to reject participation. That said, the DPHK has pledged they will use their party machine to support their pan-democratic allies should they run. The DPHK's grass-roots networks, which the Civics lack, will be vital in getting out the vote. Allen Lee judged that the DPHK will lose either way. If the Civics and the LSD are defeated, pan-democrats will ask why the DPHK did not support them enough. If they win, both parties will gain in future elections at the expense of the DPHK. CTU's Lee told us that, while he does not like the plan, he feels the need to go along in the name of pan-democratic solidarity. Whether these "we disagree, but we're with you in spirit" gestures will inspire the general public remains to be seen; CTU's Lee called the current division among pan-democrats "embarrassing."

19. (C) The second issue is whether the individual candidates can win, and even the parties themselves have their doubts. The lucky five are:

Hong Kong Island: Tanya Chan Shuk-chong (Civics)
Kowloon West: Raymond Wong Yuk-man (LSD)
Kowloon East: Alan Leong Kah-kit (Civics)
New Territories West: Leung "Long Hair" Kwok-hung (LSD)
New Territories East: Albert Chan Wai-yip (LSD)

The LSD's Andrew To felt Alan Leong, Long Hair and Albert

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Chan all might be vulnerable. He believed Long Hair could normally count on a maximum of about fifteen percent of the vote -- not enough to carry the constituency alone. To was concerned about Albert Chan as well, but was comforting himself with Chan's gut feeling he would win, which To accepted because Chan has never lost an election. The Civics' Tong concurred that these three candidates were all weak, as have other observers. Tong cited in particular polling data that New Territories East voters had little interest in the referendum. In that regard, the LSD's To felt the very public arguments between the Civics and LSD on one side and DPHK elder Szeto Wah on the other were actually valuable, since the press coverage was attracting public interest.

110. (C) The third challenge will be agreeing on a single question for the "referendum." Tong saw this as the LSD's and the Civics' greatest obstacle. The LSD are calling for both the Chief Executive and all of LegCo to be elected by universal suffrage in 2012, Tong explained, while the Civics want a clear roadmap to true universal suffrage elections in 2017 (Chief Executive) and 2020 (LegCo). To agreed this was a problem, but assured us the LSD and the Civics were "close" to reaching an agreed wording. Timing is another issue still under debate, with the earliest possible announcement of the resignations coming in mid-January.

The Immovable Object

¶11. (C) While a number of our contacts have suggested both the Hong Kong government and Beijing would prefer to avoid this "referendum," no one we've spoken with believes Beijing will be swayed even by a five-for-five win by the pan-democrats. Even the plan's supporters seem to be banking more on the international attention their action will draw than the direct impact on Beijing. From its side, Beijing seems unwilling to make any gesture, such as a clear statement on how it defines universal suffrage or on the fate of the FCs, which might either dissuade the Civics or win over the DPHK. Pro-Beijing contacts have told us dialogue with the pan-democrats is continuing, but the pan-democrats have told us their interlocutors are not decision-makers. Allen Lee told us Beijing has probably already offered everything it was willing to offer, leaving the Hong Kong government to sell a "take it or leave it" proposal. If the pan-democrats lose their blocking minority, Lee said, Beijing comes out ahead.

¶12. (C) For now, the Hong Kong government, along with the pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB) and "independent" Priscilla Leung Mei-fun have condemned the resignation plan as a waste of time and money (estimated at HK\$150 million, or over US\$19 million). Both the DAB and the Liberal Party have said that they will contest any seats opened by resignation, and both have well-known (if not overwhelmingly popular) candidates to run. Speaking during the LegCo debate December 9, Secretary for Constitutional and Mainland Affairs Stephen Lam Sui-lung also stated that there was no scope under the Basic Law for holding a referendum as part of the constitutional reform process.

Mortal Wound?

¶13. (C) Meanwhile, the battle against the FCs suffered a significant defeat in court December 10 (see ref A). High Court Justice Andrew Cheung Kui-nung ruled that corporate voting -- votes cast by heads of corporation or by associations in the FCs -- was consistent with the Basic Law as drafted. Both lead counsel Gladys Li Chi-hei and HKU law professor and barrister Simon Young (protect both throughout) told us the decision essentially placed the FCs outside the scope of Basic Law Article 26 (which grants all citizens an equal right to vote and be elected). By our read, Justice Cheung has embraced the government's argument that Article 26 was satisfied by the grant of an equal vote and right to run for office of all permanent residents in the geographic constituencies. That said, the Justice ruled the Article 26 argument to be "respectable" and did not order the applicants to pay the government's costs because the case was of public interest.

¶14. (C) Justice Cheung explicitly chose not to comment on issues of universal suffrage writ large, or on whether FCs are or could be made compliant with universal suffrage. Nevertheless, if anyone comes out ahead on this ruling, both

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barrister Li and HKU's Young think it will be the establishment, who can point to the Court's finding that FCs and corporate voting are constitutional.
MARUT